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IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ARIZONA

United States of America,

Plaintiff,

vs.

David Allen Harbour,

Defendant.

Case No. CR-19-00898-PHX-DLR(DMF)

**DEFENDANT DAVID ALLEN
HARBOUR'S MEMORANDUM RE:
DEFENDANT'S ALLEGED
VIOLATION OF RELEASE
CONDITIONS**

I. INTRODUCTION.

Defendant David Harbour did not violate any of the financial conditions of his pretrial release. The government's allegations to the contrary are supported by fanciful, speculative and illogical arguments. The Court should not modify Mr. Harbour's release conditions and should reject the government's proposed further restrictions. [See Dkt. 82 at 1.] Mr. Harbour also requests that the Court lift his travel restriction so that he can travel throughout Arizona and the United States with prior notice to Pretrial Services.

II. FACTUAL BACKGROUND.

On August 5, 2019, Mr. Harbour was indicted for three counts of wire fraud and nineteen counts of money laundering involving a fraudulent investment scheme. [See Dkt. 3.] On

1 August 8, 2019, Mr. Harbour was released on bond. [See Dkt. 17.] A condition of his release
2 was that Mr. Harbour “shall not make any financial transactions totaling over \$1000.00 in any
3 month to any person or entity without approval of Pretrial Services. Any transaction over \$1000
4 to any person or entity in any month that benefits [Mr. Harbour] also requires Pretrial Services
5 approval. [See Dkt. 17.]

6 The government alleges that Mr. Harbour violated the \$1,000 restriction condition by
7 using Abby Harbour’s American Express (“Amex”) credit card. The government also has made
8 a blanket assertion that Ms. Harbour fraudulently obtained the card. [See Dkt. 82 at 2.] The
9 government cites four transactions as support for its request for modifying Mr. Harbour’s
10 release conditions: (1) a September 19, 2019 payment to Amex of \$10,797.75; (2) an October
11 29, 2019 charge to Ms. Harbour’s Amex credit card of \$59,000.00; (3) a November 6, 2019
12 payment to Amex of \$59,300.00; and (4) a December 3, 2019 payment to Amex of \$1,287.19.
13 [See Dkt. 82 at 2.]

14 Three of these transactions are related to the purchase of a Skybox (the “Skybox”) at
15 The Phoenix Open Waste Management (the “Phoenix Open”). [See Dkt. 82 at 2.] Although
16 Mr. Harbour had the right (upon payment of the required fee) to use the Skybox at this year’s
17 Phoenix Open, he did not pay for or use it. Instead, C.C, through his company, asked to use
18 the Skybox and agreed to pay for it. Ms. Harbour paid for the Skybox with her Amex card, and
19 C.C. reimbursed her with a \$59,000 check from C.C.’s company. On January 29, 2020, counsel
20 for Mr. Harbour sent an email to Pretrial Services Officer Tammy Mahan with a copy of the
21 check, which was drawn on C.C.’s company’s account and payable to Abby Harbour for the
22 “2019 Phoenix Open.” [See Exhibit 1, Emails to Mahan.] The Skybox was used exclusively
23 by C.C., his employees, clients, family and friends.

24 On February 3, 2020, counsel for Mr. Harbour sent another email to Ms. Mahan with an
25 attachment containing Ms. Harbour’s Amex statement showing the charge and payment for the
26 Skybox. [See Exhibit 1, Emails to Mahan.] On February 4, 2020, Ms. Mahan submitted a
27 Petition for Action on Conditions of Pretrial Release (the “Petition”) for the Court’s
28

1 consideration and requested that a summons issue for Mr. Harbour's appearance on the Petition.
2 [See Dkt. 58.]

3 **III. ARGUMENT.**

4 The government spends most of its memorandum argument relying on irrelevant hearsay
5 statements to insinuate that Mr. Harbour has a propensity to fraudulently use other people's
6 credit cards. To that end, the government discusses unsubstantiated statements in a witness
7 interview of "W.Y.," Mr. Harbour's former girlfriend. Mr. Harbour was an authorized user on
8 W.Y.'s credit card. Allegedly, however, he did not pay the balances owed on the credit card,
9 causing W.Y. to get sued by the credit card company. [See Dkt. 82 at 3.] This is wholly
10 irrelevant to whether Mr. Harbour violated the financial restrictions imposed by his release
11 conditions.

12 The government claims that Ms. Harbour fraudulently obtained her Amex credit card by
13 misrepresenting her annual income. [See Dkt. 82 at 3.] The government offers no evidence
14 regarding Ms. Harbour's income, nor any evidence beyond speculation that she fraudulently
15 obtained the Amex credit card. Ms. Harbour has not been indicted. The government's attempt
16 to draw nonexistent parallels between W.Y.'s unproven and unsubstantiated statements, and
17 Ms. Harbour obtaining her Amex credit card, is over-reaching. The issue before the Court is
18 whether Mr. Harbour violated the financial restrictions of his release conditions – not how Ms.
19 Harbour obtained her credit card or Mr. Harbour's interactions with a prior girlfriend.

20 None of the four transactions cited by the government constitute a release condition
21 violation. Even though the Skybox transactions exceeded \$1,000, the Harbours did not receive
22 any personal benefit. Instead, Mr. Harbour was instrumental in continuing to raise funds for a
23 charity vital to our community. The government also failed to mention that C.C. paid for the
24 Skybox and Pretrial Services was so advised. [See Exhibit 1.] Mr. Harbour, however, is
25 cognizant of the nature and amount of the charges for the Skybox, and understands that he needs
26 to disclose any such transactions to Pretrial Services for approval in the future.

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1 The December 3, 2019 payment of \$1,287.19 to Amex was for ordinary credit card
2 charges incurred during the period of October 26, 2019 to November 24, 2019. [See Exhibit 2,
3 November 2020 Amex statement.] This payment was not intended to pay off any single charge
4 of \$1,287.19. Instead, it was a payment for at least 16 different purchases, none of which
5 exceeded \$1,000.00, and not all of which represented a benefit to Mr. Harbour. [See Exhibit
6 2.] To require Mr. Harbour to seek approval from Pretrial Services so that his wife can pay her
7 credit card every month is contrary to common sense and to the intent behind the release
8 conditions language. Ms. Harbour, for example, is not prohibited from paying off her credit
9 card bill in two transactions of \$999.00 and \$288.19, per the language of the \$1,000 release
10 condition. It is unreasonable to require Ms. Harbour, who buys groceries and pays for other
11 personal and living expenses that may not necessarily benefit Mr. Harbour, to not pay off
12 monthly Amex credit card statements in one transaction for fear of triggering disclosure to
13 Pretrial Services. For example, under the government's reasoning, if Ms. Harbour incurs
14 \$2,000.00 in credit card charges over the course of the month, but only \$1.00 of that \$2,000.00
15 was for Mr. Harbour's benefit, Mr. Harbour would still have to disclose Ms. Harbour's payment
16 of \$2,000.00 to Amex at the end of the month because it would be a "transaction over \$1000 to
17 any person or entity in any month that benefits defendant." [See Dkt. 17.] The government
18 hinges its argument for the December 3, 2019 transaction on the idea that the language of the
19 release condition does not require that all \$1,000 of a transaction benefit Mr. Harbour in order
20 to require such transaction's disclosure to Pretrial Services. Such a reading of the language
21 surely cannot be consistent with the Court's intent and a reasonable person's understanding of
22 the release condition.

23 The September 19, 2019 Amex payment of \$10,797.75 was not a payment for a single
24 charge, but for a combination of charges to Ms. Harbour's Amex credit card, the vast majority
25 of which were incurred prior to Mr. Harbour's arrest and the imposition of the financial release
26 conditions. Again, Ms. Harbour could have paid off her Amex credit card balance of
27 \$10,797.75 in eleven equal payments, all of which would have been below the \$1,000.00
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1 threshold requiring disclosure. Forcing her to do so in order to not require Mr. Harbour's
2 disclosure of such payments to Pretrial Services does not serve the purpose and intent of the
3 financial release conditions.

4 The language of the release condition is somewhat ambiguous. Such language logically
5 seems to require disclosure of purchase transactions of \$1,000.00 or more that only benefit Mr.
6 Harbour. Reading the financial release conditions the way the government posits can only lead
7 to more confusion, undue burden, and misunderstanding. The Court should not modify Mr.
8 Harbour's financial restriction related to his release conditions. At best, there has been a
9 misunderstanding. Certainly, if the Court interprets this clause otherwise, Mr. Harbor will
10 comply in the future without the need for further modification.

11 Finally, Mr. Harbour has proven during his nine months of pretrial release that he is not
12 a flight risk. He continues to contest the allegations against him; he has remained in regular
13 contact with Pretrial Services and his wife, mother, children and job are in Arizona. Mr.
14 Harbour's employment involves assisting in the development of real estate projects throughout
15 Arizona and California, which necessitates travel both in and outside of Arizona. Mr. Harbour
16 has traveled to California several times with permission from Pretrial Services without any
17 issue. He asks that he be permitted to travel as needed for work, upon condition that he give
18 prior notice to Pretrial Services, as opposed to requiring him to obtain permission.

19 **IV. CONCLUSION.**

20 Based on the foregoing, the Court should not modify Mr. Harbour's pretrial release
21 conditions related to financial restrictions. The Court should modify Mr. Harbour's pretrial
22 release conditions by allowing him to travel as contemplated above.

1 RESPECTFULLY SUBMITTED this 18th day of May, 2020.
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4 BASKIN RICHARDS PLC
5

6 /s/ Alan S. Baskin

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CERTIFICATE OF SERVICE

I hereby certify that on May 18, 2020, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF system for filing to:

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/s/ Cristina McDonald

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EXHIBIT 1 – FILED UNDER SEAL

EXHIBIT 2 – FILED UNDER SEAL